REMARKS

Claims 40 and 41 are added, and therefore claims 16 to 19, 21 to 25, 27 to 31, 33 and 35 to 41 are currently pending.

Reconsideration of the application is respectfully requested based on the following remarks.

Claims 16 to 19, 21 to 25, 30 and 31 were rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,052,471 to Van Ryzin ("Van Ryzin").

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the claimed subject matter of the claims, as discussed herein. (See *Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Office must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; and see *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic. Accordingly, it is respectfully submitted that any anticipation rejection premised on the inherency doctrine is not sustainable absent the foregoing conditions.

The Van Ryzin document concerns a receiver control circuitry of a receiver automatically detects, selects, and enables a priority signal provided to the receiver from a plurality of audio and/or visual source devices. Upon the user starting a source device that serves as a potential source of audio and/or visual input signals to the receiver, the receiver control circuitry automatically determines whether the receiver should switch to the source

device as its source of audio and/or visual information. Additionally, the receiver control circuit will automatically turn on the receiver if it is not powered-up so that this will not have to be done by the user of the receiver. (See Van Ryzin, Abstract).

Accordingly, Van Ryzin does not identically describe (or suggest) the feature in which the "first matrix element indicates if a first audio source can interrupt a second audio source," in which the "control device is configured to manage audio output interruption requests from the plurality of different audio sources as a function of the matrix elements of the audio-output matrix, wherein the managing includes a non-linear mode in which, if indicated by the matrix elements, the first audio source can interrupt the second audio source, the second audio source can interrupt the third audio source, and the third audio source can interrupt the first audio source," as provided for in the context of claims 16 and 23.

The Office Action appears to rely on the editing of the table by firmware, in which powering on of a device in order to cause the table to give priority to the newest available device as non-linear order mode. (*Paper Number 20080817, p. 2*). It is respectfully submitted that the editing of the table by firmware effectively overwrites and replaces the functionality of the priority table as originally intended, and that further managing of audio output requests are no longer done as a function of the original matrix elements.

Specifically, the priority decision table 3 indicates, for example, CD player input signal 76 has the highest priority, followed by other signals in this order: signal 78, AM/FM signal 80, phonograph signal 82, other signal 84 and so on. (*Vay Ryzin, Col. 5, lines 30 to 35*). The firmware altered priority table effectively ignores the previously priority table where the table previous gave a higher priority to the CD player signal, and the priority is now given to the newest device turned on. (*Vay Ryzin, Col. 4, lines 30 to 39*). That is, upon alteration of table's predefined priority elements by the firmware, priority is merely granted to the newest device that turns on, rather than as a function of the matrix elements of the audio output matrix.

The Office Action further asserts editable table implies a third device can take priority over the first device. (*Paper Number 20080817, p. 2*). Even though Vay Ryzin's system is set up in a way such that newest turned on devices are granted the priority, Van Ryzin is wholly silent on performing this as a function of the matrix elements. In particular, upon editing by the firmware, matrix elements can no longer predict the order of devices that are turned on by the user, nor can they grant priorities based on a priority previously defined by

table 3. The Van Ryzin reference concedes the new configuration would cause the TV signal to be given priority over the CD player signal, even though previously the priority table gave a higher priority to the CD player signal. (*Van Ryzin, Col. 4, lines 37 to 39*).

Even if the Van Ryzin document did refer to priority selection based on a table, it is unclear as to which matrix element -- if any -- is associated with a pair of audio sources, in which the control device is configured to manage audio output interruption requests from the plurality of different audio sources a function of the matrix elements of the audio output matrix, especially when priority is determined when newest device that turns on, rather than as a function of the matrix elements as claimed.

Even if Van Ryzin did refer to a way of implementing a priority decision table, (*Van Ryzin, Col. 5, lines 30 to 47*), priority determined based upon newest device turned out does not identically disclose nor suggest utilizing the matrix elements -- let alone wherein the control device is configured to manage audio output interruption requests from the plurality of different audio sources a function of the matrix elements of the audio output matrix, as provided for in the context of claims 16 and 23.

Furthermore, the Office Action relies on altered priority table by the firmware to disclose the non-linear mode. (*Paper Number 20080817, p. 2*). It is respectfully submitted that an alteration by firmware implies not using the same table and the same matrix elements. Specifically, Van Ryzin specifically indicates that the alteration would cause the TV signal to be given priority over the CD player signal, even though previously the priority table gave a higher priority to the CD player signal. (*Van Ryzin, Col. 4, lines 31 to 39*). That is, the previously assigned priority via the elements of table 3 is no longer applicable in light of the new alteration by the firmware. As such, the control device is not configured to manage audio output interruption requests from the plurality of different audio sources as a function of the matrix elements of the audio output matrix as claimed.

In addition from the foregoing, Van Ryzin does not disclose where one audio source can interrupt another audio source. In particular, audio signals detected by Van Ryzin must be uninterrupted for a specific period of time prior to passing through to priority logic block 34. In order to interrupt, there should be an existing signal and the new signal replaces the existing signal either temporarily or permanently relieving a previous audio source. At best, Van Ryzin refers to a priority logic block 34 determining which of the detected input signals

72-84 has priority and will be provided to the receiver pre-amplifier circuitry as signal 52. (*Van Ryzin, Col. 5, lines 20 to 27; Col. 6, lines 5 to 10*). However, mere determination of which incoming signals to select does not identically disclose nor suggest interruption, especially if the signals arrive uninterrupted for a period of time -- let alone first matrix element indicates if a first audio source can interrupt a second audio source as provided for in the context of claims 16 and 23.

The Office Action does rely upon the depicted priority ranking of devices 6 and 7 (vid1 and vid2, respectively), as supposedly disclosing a non-linear interruption mode. However, the depicted priority ranking of devices 6 and 7 also refers to nothing more than a conventional linear priority ranking. For example, FIG. 3 and the discussion at col. 5, lines 30 to 44, indicates that if both vid1 and vid2 are present, or if only vid2 of vid1 and vid2 is present, then vid2 is ranked higher than vid1. FIG. 3 and the col. 5 discussion also indicates that if only vid1 of vid1 and vid2 is present, then vid1 is chosen. However, this relative ranking of vid1 and vid2 is nothing more than a conventional linear ranking. That is, vid2 is always ranked higher than vid1 because the only case in which vid1 is chosen instead of vid2 is the case in which vid2 is not active. Therefore, the depiction and discussion of vid1 and vid2 in the "Van Ryzin" reference is clearly that of a conventional linear priority ranking.

The Office Action also indicates that the depiction of FIG. 3 in the "Van Ryzin" appears to be confusing, and purports that such confusing presentation obscures the supposed presence of a disclosed non-linear priority ranking. However, Applicants submit that even if FIG. 3 of the "Van Ryzin" reference is poorly presented and confusing, this does not bolster the Office Action's contention that the "Van Ryzin" reference refers to a non-linear priority ranking. To the contrary, as is made clear by the explanation above, when taken as a whole, nothing about the depictions or discussion of the treatment of the vid1 and vid2 sources in the "Van Ryzin" reference identically discloses a non-linear priority ranking.

Moreover, the features of independent claims 16 and 23 were previously better clarified to indicate the implications of the claimed non-linear priority ranking of the claimed subject matter. That is, claims 16 and 23, as presented, provide that the non-linear mode can include, if such priorities are indicated by stored matrix elements, that the first audio source can interrupt a second audio source, the second audio source can interrupt a third audio source, and the third audio source can interrupt the first audio source. This claim feature is disclosed in the present Application, e.g., in the exemplary embodiment discussed at page 6,

lines 16 to 22, of the Substitute Specification, and depicted in FIG. 2. Thus, if the first audio source is CD, the second audio source is E-Mail and the third audio source is Traffic Information, then as discussed and depicted, CD has priority over E-mail, E-mail has priority over Traffic Information, and Traffic Information has priority over CD. Nothing in the "Van Ryzin" reference identically discloses (or even suggests) such a non-linear mode, as provided for in the context of the presently claimed subject matter.

Therefore, the "Van Ryzin" reference does not disclose the above-discussed features of claims 16 and 23, as presented, and it is respectfully requested that the anticipation rejections be withdrawn.

Claims 27 and 28 were rejected under 35 U.S.C. § 103(a) as unpatentable over the "Van Ryzin" document in view of U.S. Patent No. 4,306,114 to Callahan ("Callahan"). (*Paper Number 20080817, p.5*).

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 27 and 28 depend from independent claim 23, and are therefore allowable for essentially the same reasons, since the critical deficiencies of the "Van Ryzin" document are not cured--and are not asserted to be cured--by "Callahan". Therefore, withdrawal of the obviousness rejections is respectfully requested.

Claims 29, 33 and 37 to 39 were rejected under 35 U.S.C. § 103(a) as unpatentable over the "Van Ryzin" in view of U.S. Patent No. 5,243,640 to Hadley et al. ("Hadley"). (*Paper Number 20080817, p.6*).

Claims 29, 33 and 37 to 39 depend from independent claims 16 and 23, and are therefore allowable for essentially the same reasons, since the critical deficiencies of the "Van Ryzin" are not cured--and are not asserted to be cured--by "Hadley". Therefore, withdrawal of the obviousness rejections is respectfully requested.

With respect to newly added claims 40 and 41, these claims do not add any new matter and are supported by the present application. Moreover, claims 40 and 41 depend from claim 23, as presented, and are therefore allowable for the same reasons as claim 23, as presented. Additionally, these claims include further features which are not disclosed by the applied references.

Accordingly, claims 16 to 19, 21 to 25, 27 to 31, 33, and 35 to 41 are allowable.

CONCLUSION

Applicants respectfully submit that all pending claims of the present application are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn. Prompt reconsideration and allowance of the present application are therefore respectfully requested.

Respectfully submitted,

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